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2 LAWYERS TERM RUBY TRIAL UNFAIR

392-Page Study Is Critical of the Presiding Judge—Cites His Book Contract

By WILL LISSNER

Did Jack L. Ruby, Dallas nightclub owner who killed Lee Harvey Oswald, President Kennedy's assassin, receive a fair trial? Was the penalty imposed —death in the electric chair— the right one?

Answering both questions in the negative, a 392-page study of the case, "The Trial of Jack Ruby," published last week by the Macmillan Company, adds new fuel to the fires of controversy that have enveloped Ruby's prosecution.

Ruby is scheduled to have a sanity hearing in Dallas today before District Judge Louis T. Holland. Last Sept. 10 Judge Holland denied a plea for a new trial for Ruby based on an argument that the judge who presided at Ruby's trial, Joe B. Brown Sr., should have disqualified himself.

The latest book on the events in Dallas was written by two law school professors, John Kaplan of Stanford University and Jon R. Waltz of Northwestern. Both are experienced trial lawyers.

Weaknesses Found

They conclude that the Ruby case reflected little credit on the legal profession or the judicial process, and that it exposed the weaknesses of trial by judge and jury.

The heaviest of their strictures are aimed at Judge Brown, the presiding judge at the trial. He contracted for a fee to write a book about the case, which might still be before him "at the time his book was published," the authors charge, calling the situation "grotesque."

Judge Brown wrote a letter to the publishers, Holt, Rinehart and Winston of New York, proposing that he deny having begun to write the book. The authors "guess' that the disclosure of the letter led Judge Brown to disqualify himself from conducting the sanity hearing.

From his chambers in Dallas, Judge Brown said over the telephone Friday night that he had found what he had read of the law professors' book so far "hostile" and "biased."

"Its replete with inaccuracies," he said.

As an example of an inaccuracy, Judge Brown cited the statement that "to no one's great surprise" Judge Brown "exercised the prerogative of assigning it [the Ruby case] to himself."

"He implies that I sought the case, which is the opposite of the truth," Judge Brown said. "The fact is that the case came to me by lot. I was chosen by lot to impanel the grand jury can get some other judge to

"It is customary for the judge who impanels the jury to take the case himself unless he can get some other judge to take it. I tried several other

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judges and they begged off. So I had to take the case. It was not the type of case a judge relishes."

34 Appeals Cited

The book also says, Judge Brown pointed out, that the judge has had 34 cases appealed and in 10 he had been reversed on the ground of errors prejudicial to the accused.

"I don't know where they got these statistics," Judge Brown said. "They could have got the facts from the clerk of the court. I have had at least a hundred decisions appealed. I don't know how many have been reversed on the ground of judicial error, but 10 would not be very significant."

The authors concede that "a judge's batting average on appeal is a faulty measure of his competence" and, after an extended discussion, note that Judge Brown "was generally considered a defense judge."

Judge Brown said he had agreed to write the book only after the case was concluded, indicating that he considered it concluded with the jury verdict. He has testified that one reason he allowed friends to persuade him to write it was that in the public records he had been "cast as the hanging judge in a city of hate."

He said his letter to the publisher was dated March 12, 1965 —a year after the conclusion of the trial—and that he had not begun to write then. The "190 pages completed" to which the letter refers were by a researcher and did not refer to author's pages, he said. His own manuscript is still incomplete, he said.

For the prosecution the law professors have much praise and only slight criticism. For the defense they have high praise and sharp criticism. They conclude that Melvin Belli, "very possibly the best-known private practitioner in the United States," who was chief counsel for Ruby at the trial, made "tactical errors."

If Mr. Belli's errors produced "the wrong result," they say, this is because the adversary system requires not only that both sides be represented equally well but that they have equal luck.

The authors do not indicate what they think Ruby's penalty should have been. But they report that even the prosecution considered the death penalty "too severe." They say that the degree of Ruby's guilt was one of the main issues of the trial and that the trial did not settle the question.

Another factor that kept Ruby from getting less than the measure of justice to which he was entitled, the authors write, is that the Ruby trial was "a state case," one involving the highest interests of the state.

"Our legal procedures," they conclude, "are not designed for cases in which all of the participants -- the lawyers, the judge, the witnesses and the jury—know that the eyes of the nation are on them."